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June 16, 2014

Mr. Barry F. Mardock  
Deputy Director  
Office of Regulatory Policy  
Farm Credit Administration  
1501 Farm Credit Drive  
McLean, VA 22102-5090

RE: Proposed Rule on Standards of Conduct – RIN 3052–AC44 / *Federal Register* 79 (February 20, 2014)  
9649-9661

Dear Mr. Mardock:

Farm Credit West appreciates the opportunity to provide comments on the Farm Credit Administration's ("FCA") proposed rule regarding standards of conduct. Farm Credit West is strongly committed to a culture of ethical conduct, integrity and the avoidance of even the appearance of conflicts of interest. Farm Credit West believes that high standards of conduct and ethical business practices are fundamental to the way we conduct our business and fulfill our mission of service to agriculture and rural communities. We certainly understand and share FCA's desire to ensure that System institutions maintain high ethical standards; however, as discussed in this comment letter and the numerous other comment letters submitted to FCA, the proposed standards of conduct rule is overly burdensome and unworkable in many respects. Farm Credit West would urge FCA to revise the proposed rule and re-submit for public comment.

Farm Credit West's concerns are detailed below. We believe the principles on which our concerns are based are shared by a significant number of other System associations as will be reflected in comment letters submitted by other associations as well as individual directors from around the System. We request that FCA carefully consider all of these comments. In addition, we strongly support the comments submitted by the Farm Credit Council as they reflect the consensus views of the entire Farm Credit System on this important matter and the comments submitted by CoBank.

#### **Overall Comments**

The treatment of directors, especially the pre-approval requirement for transactions between directors and customers, is a serious disincentive for qualified individuals who wish to serve as directors and therefore undermines the cooperative governance structure established by Congress for the Farm Credit System. Strong, qualified directors are critical to the success of Farm Credit West and other Farm Credit System institutions. The proposed rule's requirements would in many cases be so burdensome – with no corresponding benefit to safety and soundness or mitigation of conflicts of interest – that many directors or potential director candidates simply would choose not to serve. Farm Credit West's directors have expressed serious concerns about the proposed transaction disclosure requirements and the issues that could create for their businesses.

Farm Credit West also is concerned that the proposed rule, as drafted, shifts the burden for compliance from individual directors or employees on to the association and the standards of conduct official. Under the proposed rule, the standards of conduct official would have an onerous burden to reasonably ensure compliance by directors, employees and agents (*see proposed §612.2160(a)*).

In many cases, the standards of conduct official would be required to make numerous determinations on routine matters as directors seek pre-approval of normal course of business transactions. This proposed regulatory standard is virtually impossible to meet and serves no real purpose related to conflicts of interest. Furthermore, it is far beyond the standards applied to other regulated financial institutions.

Fundamentally, an institution can only be responsible for administering its standards of conduct programs and addressing ethical violations in an effective manner. It is unreasonable to hold an institution accountable for regulatory, ethical and conduct violations of the individuals they employ. Currently, the standards of conduct official is a resource for an association and works with employees, directors, and agents for the betterment of the association and the System through the effective management of conflicts of interest and assistance in compliance with regulatory requirements.

The proposed rule results in a shift from individuals being accountable for their conduct under the regulations to associations being accountable. Industry best practices are that directors and employees are responsible for making disclosures, and the standards of conduct official helps manage identified potential conflicts of interest. If a director or employee fails to make appropriate disclosures or engages in a conflict matter, the standards of conduct official then completes an investigation and takes appropriate action. The proposed rule places the standards of conduct official in an unworkable position of being responsible and accountable for the quality and accuracy of individual's disclosures.

The proposed rule overreaches in its treatment of "agents" of System institutions. FCA's proposed standard goes well beyond that of any other financial regulator and would be a strong disincentive for any firm or person that could be construed as an "agent" from working on behalf of a System institution. Compliance with the proposed rule in this area would be virtually impossible in today's marketplace.

Farm Credit West asks FCA to revise the proposed rule to make it workable for System institutions. We believe that this can be accomplished while still achieving a strengthening in requirements in an appropriate manner.

Farm Credit West offers the following specific section-by-section comments to be considered in conjunction with the comments submitted by the Farm Credit Council and by CoBank. Farm Credit West joins in and strongly supports the comments submitted by the Farm Credit Council and by CoBank.

### **Section-by-Section Comments**

#### **§612.2130 Definitions**

Farm Credit West joins in the comments submitted by Farm Credit Council and by CoBank.

#### **§612.2135 Responsibilities and Conduct**

The addition of the words "and guidance" to the language of 612.2135 raises some serious concerns. This language implies that directors and employees will be legally required to follow any "guidance", or other similar statement, issued by FCA through review teams, etc. This would effectively allow FCA to circumvent the notice and comment requirements under the Administrative Procedure Act. In order to establish rules with the force of law, FCA must go through rulemaking which includes the opportunity for notice and comment. To do otherwise, amounts to FCA establishing an unprecedented regulatory atmosphere allowing a regulator to establish "law" by fiat and whim.

#### **§612.2136 Conflicts of Interest**

The transaction disclosure requirements in the Conflicts of Interest section of the proposed rule are completely unrealistic in the "real world" of ag business. The transactions coming under the reporting and approval requirement include any transaction where a director would "directly or indirectly borrow from, lend to, or become financially obligated with or on behalf of, a director, employee, . . . or a borrower". The proposed rule ignores associations' cooperative structure and the way business is transacted in an ag operation. There are many transactions that decisions need to be made immediately and can't wait for a pre-approval process to be completed—e.g., equipment auctions, purchases negotiated at trade shows, etc. Directors routinely have business transactions with a wide variety of individuals, some of whom might be association borrowers. For the most part, directors don't know if they are dealing with an association borrower. Even in those situations where directors know they are dealing with an association borrower, there is no conflict of interest if they do not have any role in approving loans or the terms of loans for the association, which is the case with Farm Credit West.

FCA's proposed transaction disclosure requirements could create significant issues for directors businesses. The transaction disclosure requirements would necessitate directors establishing an infrastructure within their business to track and report transactions with borrowers that came within the "transactions" described in the proposed rules. This results in additional burden and risk, along with associated costs, to a director's business. The transaction reporting requirement could potentially impact the viability of a director's business. If other borrowers know that a director's transactions with them has to be reported, the borrowers will likely choose to do business elsewhere rather than have their business transactions subject to a reporting requirement along with the delays that would create in finalizing a transaction.

The potential number of ordinary course of business transactions that would be subject to reporting would be significant. Ordinary course of business transactions do not create conflicts of interest issues for directors. Such a burdensome transaction reporting and pre-approval requirement is not addressing safety and soundness issues nor does it serve a material purpose related to conflicts of interest. Furthermore, the proposed transaction disclosure requirements impose an onerous burden on directors which will discourage highly qualified individuals from seeking to serve on association boards and would cause current directors to seriously question their willingness to continue to serve on the board.

Farm Credit West would suggest the following alternative approach for FCA's consideration:

- A) No pre or post-transaction approval from the Standards of Conduct official for ordinary course of business transactions between directors or employees and borrowers.
- B) Reporting to the Standards of Conduct official will be required on a post-transaction basis if the director or employee had knowledge they were dealing with a borrower if:
  - (i) Director: the association board has not delegated loan approval and loan collection to management;
  - OR
  - (ii) Employee: job duties include loan approval or loan collection;
  - AND
  - (iii) Only those ordinary course of business transactions deemed to be material by the association need to be reported. The reporting would be required on an annual basis as part of the director or employees annual standards of conduct disclosure process.

#### **§612.2140 Director Reporting & §612.2150 Employee Reporting**

The proposed rule requires directors and employees to report to the standards of conduct official "the name of any relative or any person residing in the director's (or employee's) household, any business partner, or any entity controlled by the director (or employee) or such persons (alone or in concert) if the director (or employee) knows or has reason to know that such individual or entity transacts business with the institution or any institution supervised by the director's (or employee's) institution." We do not agree with the FCA's

presumption that a Farm Credit West director or employee would know or have reason to know whether or not a relative or other persons residing in the director's or employee's household had or has transactions with the Farm Credit West. In practice, directors and employees do not know about all the financial transactions of their relatives or business partners. Further, whether or not a director or employee would "have reason to know" about such transactions creates additional confusion and ambiguity. Either a director or employee does, or does not, know about any given transaction between any of the listed individuals or entities and a Farm Credit institution. Those transactions that are in fact known by the employee or director should be sufficient for the reporting standards. For these reasons, Farm Credit West would request that FCA apply an "actual knowledge" standard to this requirement prior to issuing the final rule.

Farm Credit West would also suggest that FCA consider including a provision in the proposed rule that prohibits association directors from having any involvement in the approval of association loans (e.g., serving as a member of loan committee). Such a prohibition would simplify the reporting process for directors as this would remove the director from any direct influence in a customer/borrower's business activity with the association. If directors are precluded from acting on the approval of loans, the need for the directors to know whether family members or other third parties set out in 612.2140 have transactions with the association becomes irrelevant from a reporting standpoint.

#### **§612.2145 Directors – Prohibited Conduct & §612.2155 Employees – Prohibited Conduct**

In addition to the comments set forth above in the discussion of section 612.2136, Farm Credit West joins in the comments submitted by Farm Credit Council and by CoBank.

The proposed rule requires that all conflicts of interest be handled on a prior approval, case by case basis. There is no allowance for post approval. The ability to obtain post approval of transactions is important in order to maintain a corporate culture of full disclosure by directors and employees. A hard line rule of no post approval of transactions certainly will not encourage the transparency and full disclosure that should be the goal in the area of standards of conduct.

#### **§612.2160 Institution Responsibilities**

This section of the proposed rule requires that Farm Credit West must "ensure compliance" with this part. How can Farm Credit West "ensure compliance" by individuals with any regulation? This would be the equivalent of holding a city police department responsible because a person did not obey the law. The police department can enforce the law when it is broken by a person but certainly cannot "ensure" that everyone subject to that law will comply and obey it. Farm Credit West can maintain an effective standards of conduct program and ensure accountability for regulatory compliance between Farm Credit West and individual directors and employees. Farm Credit West can be accountable for maintaining and enforcing the standards of conduct program but the individual director or employee must be accountable for their own conduct.

#### **§612.2165 Code of Ethics, Policies, and Procedures**

The proposed rule requires the board to "establish criteria for business relationships and transactions not specifically prohibited by this part". This language is vague and potentially applicable to any type of business transaction or relationship which could conceivably take place. It is unrealistic to expect an association to come up with criteria for each and every business relationship or transaction which could potentially transpire. Farm Credit West would ask FCA remove this requirement prior to issuance of a final rule or, alternatively, clarify its intent.

Paragraph (b)(2)(i) of this section assigns the standards of conduct official the responsibility to review all loans under Sections 614.4460 and 614.4470 for compliance before the supervisory bank's approval. In many cases, the standards of conduct official may not be the most appropriate person in an institution for such an undertaking. There could conceivably be many instances where the standards of conduct official is not someone with the technical expertise or knowledge of terms, interest rates, or other relevant information necessary for such a role. It would be appropriate for the standards of conduct official to have the authority

to delegate this responsibility to another individual whose role is more aptly suited for such a responsibility. Farm Credit West requests that FCA make this delegation authority clear prior to issuing a final rule.

**§612.2170 Standards of Conduct Official**

The proposed rule requires the standards of conduct official to report a "known or suspected criminal or standards of conduct violation by a director, employee or agent [which] may have an adverse impact on continued public confidence in the System or any of its institutions". The use of the word "suspected" is ambiguous and would be subject to a myriad of interpretations by different individuals. Farm Credit West would ask FCW to remove the phrase "or suspected" prior to issuing a final rule. Farm Credit West also recommends that FCA drop the phrase "adverse impact on continued public confidence in the System or any of its institutions". System directors and employees are well aware of the importance of reputational risk facing System institutions, however, the proposed rule appear to inappropriately assign ownership of reputational risk to the standards of conduct official. It is the duty and responsibility of all directors and employees to closely guard the reputation of their institution.

**§612.2180 Standards of Conduct for Agents**

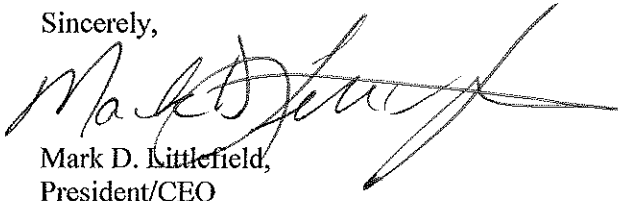
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Thank you again for allowing Farm Credit West the opportunity to comment on this important regulation regarding standards of conduct. We hope that these comments have provided FCA with some perspective on how the proposed rule will affect the System associations from a practical standpoint. As previously noted, we find this topic to be of the utmost importance and look forward to working with FCA to ensure a workable final rule. Farm Credit West appreciates FCA's consideration of the concerns and recommendations set forth in this letter to improve the final rule.

Please contact me if you wish to discuss our comments or require additional information in support of the comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark D. Littlefield", is written over a horizontal line.

Mark D. Littlefield,  
President/CEO